

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**DAVID BAILEY, ET AL,
PLAINTIFFS,**

v.

**BRAD LIVINGSTON, ET AL,
DEFENDANTS.**

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CIVIL ACTION NO. 4:14-cv-1698

AFFIDAVIT OF MATT DEMNY

STATE OF TEXAS

COUNTY OF WALKER

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BEFORE ME, the undersigned authority, on this day personally appeared **MATT DEMNY**, and after being first duly sworn according to law, upon his oath, deposed and said:

"My name is Matt Demny. I am over 21 years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts contained herein, and they are all true and correct.

"I am employed as the Director of the Agribusiness Land & Minerals Department ("ALM") for the Texas Department of Criminal Justice ("TDCJ"). I have held this position from September 15, 2009 to present. From June 15, 2008 to September 2009, I held the position of Assistant Director of ALM. From my years working in the ALM Department, I have gained in-depth knowledge of the TDCJ agricultural operations, including the swine production operation. Specifically, I have personal knowledge of the farrowing and other swine production facilities located at the Eastham Unit.

As Director of ALM, I provide direction and oversight to a variety of programs and personnel within the department. In this position, I have access to documents related to the agricultural operations within the department.


"TDCJ operates one of the largest integrated agricultural operations in the country. One component is swine production. The entire process, from growing and processing grain; to the production and distribution of feed; to the breeding, farrowing, and growing of the pigs; to the production and shipment of finished edible pork products to the units; is contained within the TDCJ. The weening/growing stage of swine production is a small part of the overall TDCJ swine operation.

According to records, a weaning/growing facility with 80 pens was put into service in 1978 at the Eastham unit. On October 30, 2003, a fire destroyed 60 of the 80 pens. The remaining 20 pens were repaired to temporarily hold pigs. By 2007, the entire facility had deteriorated to a point where continued use of the 20 pens became cost prohibitive. As such, a major work request was initiated in 2007 to repair or replace the damaged facility.

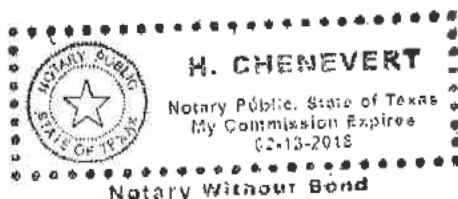
Records also indicate that in 2012, TDCJ purchased 6 modular swine buildings. I have attached true and correct copies of photographs that accurately depict the modular swine buildings that are installed at the Eastham Unit.

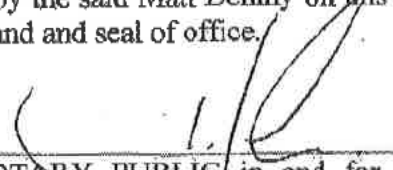
The modular production units are single-wide trailer facilities designed to be transported to their site in one piece and put into use with little on-site construction required. They were installed at the Eastham Unit and are used for farrowing and weaning pigs. In 2012, an industry standard for weaning facilities was to utilize fans and evaporative coolers as well as heaters in these structures. Since these facilities were designed without windows or other significant openings to allow for air flow, the fans and evaporative coolers were an integral part of the modular buildings. Additionally, the Eastham Unit has several other brick structures that have been part of this production facility for years and they are simply cooled by drippers, fans, and open air.

"Further affiant sayeth not."


MATT DEMNY
Director, Agribusiness Land & Minerals
Texas Department of Criminal Justice

SWORN TO and SUBSCRIBED before me, by the said Matt Demny on this the 16 day of November 2015, to certify which witness my hand and seal of office.




NOTARY PUBLIC in and for the STATE OF TEXAS

H. Chenevert
Notary's Printed Name

2-13-2018
My commission expires:

DECLARATION OF MELINDA BREWER

"I am over 21 years of age, of sound mind, capable of making this declaration, and personally acquainted with the facts herein stated.

"I am a custodian of records for the Facilities Division of the Texas Department of Criminal Justice ("TDCJ"). Attached are true and correct copies of Major Work Requests associated with the installation of modular Swine Barns at the Eastham unit, which are kept by the TDCJ in the regular course of its business activity. The entries of such records were made as a regularly conducted activity and a regular practice of the TDCJ, and were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.

"My name is Melinda Brewer and I am an employee of the TDCJ, a governmental agency. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Walker County, State of Texas, on the 4th day of November, 2015.



MELINDA BREWER
MANAGER, PROGRAM ADMINISTRATION
FACILITIES DIVISION
Texas Department of Criminal Justice

8581

PROJECT MASTER FILE FOR MWR

00907012

DD

**1. REQUEST & AUTHORIZATION
MAINTENANCE WITH ENGINEERING
(Submitted by Program Administration)**

Initial &
Check if
Included

Table Of Contents

Only items applicable to this project are noted.

SH ☒ Authorization for Construction, Maintenance and/or Remodeling

SH ☒ Project Approval
☒ Facilities Division Director
☒ Facilities Review Board (FRB)
☐ Executive Director
☐ Texas Board of Criminal Justice (TBCJ)

SH ☒ Initial Project Budget (issued by Program Administration)

☐ Job Scope

SH ☒ Initial Construction Cost Estimate (issued by Scopes/ Engineering)

SH ☒ Major Work Request Review Process

SH ☒ Construction Method

SH ☒ Major Work Request Packet

☐ TBCJ Donations Approval

☐ Other: (☐ See Attached "Other")

RECEIVED
 NOV 19 2012
 FACILITIES DIVISION

Program Administration/Reviewer: <u>Abundiyev, Haden</u>	Date: <u>11/2/12</u>
Engineer/Reviewer: <u>Alma K. S. S. S.</u>	Date: <u>11-14-12</u>
Date Received by Document Control Master File Coordinator: <u>11/19/12</u>	
Date Contents Verified by Document Control Master File Coordinator: <u>11/19/12 EC</u>	
Date Received by Document Control: <u>11/19/12</u>	Date Scanned by Document Control: <u>11/19/12</u>

Texas Department of Criminal Justice

8581

**Authorization for
Construction, Maintenance and/or Remodeling**

MWR # 00907012 Location: EASTHAM Date Issued: 11/2/2012

Proposed Project: REPLACE SWINE BUILDING W/MODULAR BLDGS.

Job Number: 009-4010-53-04 Class Code: E Bond Budget: \$ 883,800.00

LoneStar Number: 009103 GR Labor: \$ 4,600.00

Property Number: GR Material: \$ -

Total Approved Budget: \$ 888,400.00

Justification for Project: FRB APPROVAL FOR DESIGN AND CONSTRUCTION

Drawings:

Project Type:

☒ Yes

☐ Equipment Replacement

☐ No

☐ Design Only/Future Construction

☐ Sketch

☐ Maintenance < \$50,000

Energy Certification Required:

☒ Design & Construction

☐ Yes

☐ General Revenue Funded

☒ No

☐ Construction (Design not required)

**** Approval: see approval memorandum dated 10/24/12****

Approval of \$1,000,000.00 or Above Required by Board of Criminal Justice

Board Approval Date:

Work performed by: **REGION I MAINTENANCE**

***** ADPICS - MASTER ACCOUNTING INFORMATION *****			
CODING	ADPICS DEPT. #: 009 4590		
INDEX	PCA	AOBJ	LONESTARS/PHASE
18600	72660	VARIOUS	009103 99

Job Closing Information	Internal Use Only
Closed Date: <u> </u>	Prepared by: <u>SHANDILYNNE HOLLEY</u>
Closed Amount: <u> </u>	MWR Received: <u>3/27/2007</u>
Submitted to Acct. & Bus. Services By: <u> </u>	Checkbook: <u>12/13</u>

APPENDIX 1433

8581

TEXAS DEPARTMENT OF CRIMINAL JUSTICE FACILITIES DIVISION

INITIAL PROJECT BUDGET DESIGN & CONSTRUCTION

TRACKING NUMBER:	00907012	DATE:	10/01/12
PROJECT LOCATION:	EASTHAM		
PROJECT DESCRIPTION:	REPLACE SWINE BUILDING W/MODULAR BLDGS.		
Budget Prepared by:	SHANDILYNNE HOLLEY	Estimate Prepared by:	
Budget Approved by:	<i>D. Brewer 10/3/12</i>	TDCJ Engineer Approval:	

DESIGN

In-house Design Bond (Oversight included)

\$ -

In-house Design GR (Oversight included)

\$ 3,000.00

A/E Design

\$ -

Commissioning

\$ -

TOTAL DESIGN

\$ 3,000.00

CONSTRUCTION

Contract

\$ -

In-House Labor (GR)

\$ 1,600.00

In-House Materials

\$ 792,000.00

Testing

\$ -

TOTAL CONSTRUCTION

\$ 793,600.00

TOTAL DESIGN & CONSTRUCTION

\$ 796,600.00

PROJECT CONTINGENCY

\$ 43,900.00

PROJECT OVERHEAD

\$ 27,900.00

GENERAL ADMINISTRATION OVERHEAD

\$ 20,000.00

TOTAL BOND

\$ 883,800.00

TOTAL GR

\$ 4,600.00

REV. 04/12

TOTAL AMOUNT AUTHORIZED

\$ 888,400.00

8581

Facilities Review Board

October 24, 2012

Approved Project

MWR #:	00907012
Unit:	Eastham
Title:	Replace Swine Building w/Modular Bldgs.

FACILITY REVIEW BOARD APPROVAL

FACILITIES DIVISION - VARIOUS PROJECTS

	CONCUR	NON-CONCUR	Initial/Date
Frank Inmon Director, Facilities Division	✓		<i>FI</i> 10/24/12
Jerry McGinty Chief Financial Officer	✓		<i>JM</i> 10/24/12
R. C. Thaler Director, Correctional Institutions Division	✓		<i>RT</i> 10/24/2012
Bryan Collier Deputy Executive Director	✓		<i>BC</i> 10/24/12
Brad Livingston Executive Director	✓		<i>BL</i> 10/29/12
BUDGET AUTHORITY Sherry Koenig Budget Director	✓		<i>SK</i>

Comments:

Request authority to proceed with the projects outlined in the attached FRB Agenda dated 10/24/2012

B - Cost Increases (Construction) - 2 Projects - TEPC \$1,011,100

C - Projects Moving into Construction - 21 Projects - TEPC \$22,201,900

D - New Projects for Design & Construction - 32 Projects - TEPC \$6,576,400

E - New Projects for Construction (No Design Required) - 12 Projects - TEPC \$1,192,200

F - New Projects (Other Funding Source) - 6 Projects - TEPC \$1,440,700

G - New Projects for Design Only - 2 Projects - TEPC \$42,000

* TEPC - Total Estimated Program Cost

PROGRAM ANALYSIS

DATE: 11-2-12
 LOCATION: 009-4010-53-04
 LONE STARS #: 009103
 BUDGET: 1800-4010925

FRB Project Checklist

Proposed FRB Date October 24, 2012

MWR # 00907012

Location: Eastham

Title: Replace Swine Building w/Modular Bldgs.

Y, N or N/A

1. Copy of MWR (MWR Coordinator)

Y

2. Engineering Required 1-5

Y

3. Construction Method Approval

Y

4. Scope (Planning & Programming)

N/A

5. Executive Summary (Engineering)

X

6. TCI Estimate

N/A

7. Labor & Material Estimate (Maintenance)

Y

8. FAF (Project Control)

N/A

NOTE: (Number 9, 10 & 11 should be completed after the FRB Coordination Meeting)

9. Budget (Program Analysis)

Y

10. Project Summary (MWR Coordinator)

Y

11. Placed on the FRB Agenda per selected category below

Y

Categories:

Design only ☐ New Project ☐ New Project for Construction ☐

Design & Construction ☒ Project Moving into Construction ☐

Authorized Project – Change of Scope ☐ Cost Increase ☐

FACILITY REVIEW BOARD APPROVAL

EASTHAM-REPLACE SWINE BUILDING W/MODULAR BLDGS.

MWR #00907012

	<u>CONCUR</u>	<u>NON-CONCUR</u>	<u>Initial/Date</u>
Frank Inmon Director, Facilities Division	_____	_____	_____
Jerry McGinty Chief Financial Officer	_____	_____	_____
R. C. Thaler Director, Correctional Institutions Division	_____	_____	_____
Bryan Collier Deputy Executive Director	_____	_____	_____
Brad Livingston Executive Director	_____	_____	_____
BUDGET AUTHORITY Sherry Koenig Budget Director	_____	_____	_____

Comments:

This project is to Replace Swine Building w/Modular Bldgs. at the Eastham Unit. This facility was originally a weaning/growing facility with 80 pens. A fire destroyed 60 pens and the remaining 20 were repaired. These pens have deteriorated which has adversely affected swine production and prevents the utilization of this facility. This project would replace the building with modular buildings. Request approval to proceed with design and construction at an estimated total program cost of \$888,400. Design to be accomplished by In-House Design and work to be accomplished by an Outside Vendor with Unit Maintenance oversight.

<u>Previous Impact</u>		<u>Current Impact</u>	
Bond Impact		Bond Impact	\$ 883,800
GR Impact	\$ -	GR Impact	\$ 4,600
Total Impact	\$ -	Total Impact	\$ 888,400
Total FRB Approval		\$888,400	

PLEASE RETURN TO
MELINDA BREWER
FACILITIES DIVISION PROGRAM ADMINISTRATION
WEST HILL MALL - SUITE 400

MAINTENANCE EXECUTIVE SUMMARY

DATE: October 4, 2012

SUBJECT: FRB Approval for ☒ Design ☒ Construction

UNIT: Eastham

PROJECT: Replace Swine Building W/Modular Bldgs.

MWR: 00907012

Summary: This project is to replace the swine building at the Eastham Unit.

Discussion: It is proposed to replace the swine building with modular buildings. This facility was originally put in service as a weaning/growing facility with 80 pens. A fire destroyed 60 of the pens in October 2003. These remaining 20 pens were repaired to temporarily hold pigs, but the current deteriorated condition adversely affects swine production and prevents the utilization of this facility.

Recommendation: It is recommended that this project be funded for design and construction. The work will be accomplished by an Outside Vendor with Unit Maintenance Oversight.

	METHOD	COST	DURATION
DESIGN	<input type="checkbox"/> OA/E <input checked="" type="checkbox"/> IHD <input type="checkbox"/> N/A	\$ 3,000	90 90 days
CONSTRUCTION	<input type="checkbox"/> CC	\$	168 days
	<input checked="" type="checkbox"/> Maintenance	\$ 792,000	
	<input checked="" type="checkbox"/> GR Labor	\$ 1,600	
	<input type="checkbox"/> TCI	\$	
TOTAL CONSTRUCTION COST:		\$ 793,600	

Steve Isbell, PE.
10/11/12

PROJECT COST ESTIMATE

8581

FRB

Date	9/28/2012
Analyst	Shandilynne Holley
Funding Category	CON
Unit	Eastham
MWR #	00907012
Project Description	Replace Swine Building w/Modular Bldgs.
1-5% Design	To be determined by Analyst
Vendor Service	\$792,000
GR Labor (Oversight)	\$1,600

Requestor	Susan Nelson
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MWR SCHEDULING FORM/LABOR ESTIMATE

DATE:	Sept 28, 2012 Est. by Ron Robertson
UNIT NAME:	EASTHAM
UNIT MWR TRACKING #:	#00907012
FACILITIES MWR # (If established):	#00907012
DESCRIPTION OF PROJECT:	Replace swine bldg. with modular bldgs.
WORK TO BE DONE BY (Unit, Region, Vendor):	w/ OSVDR UNIT oversight
JUSTIFICATION FOR WORK ASSIGNMENT (Required if project is assigned to Region):	Facility needs renovation to maintain production capacity.
MATERIAL BUDGET NEEDED (\$):	\$792,000.00
LABOR HOURS NEEDED FOR PROJECT (These hours will be used for the project budget):	80 hrs X \$20.00 = \$ 1,600.00
PROCUREMENT TIME NEEDED (Standard 6 weeks will be estimated unless otherwise specified):	16 Weeks
CONSTRUCTION SCHEDULE NEEDED TO COMPLETE PROJECT (This is used for scheduling/planning purposes. Estimate in weeks - with 1 week minimum):	8 Weeks
EQUIPMENT RENTAL (Specify type of equipment & rental cost needed):	n/a
INCLUDE TRAVEL PER DAY, PER PERSON IF APPROPRIATE (USE APPROPRIATE UNIT LODGING & MEAL RATES):	n/a

**THIS SECTION TO BE USED BY CLIFF DAVIS/REGION 1 MAINTENANCE
ASBESTOS ABATEMENT ISSUES (IF APPROPRIATE):**

ABATEMENT MATERIAL BUDGET NEEDED (\$):	n/a
LABOR HOURS NEEDED FOR ABATEMENT (These hours will be included in the project budget):	Bond or GR
PROCUREMENT TIME NEEDED (Standard 6 weeks will be estimated unless otherwise specified):	Weeks
CONSTRUCTION SCHEDULE NEEDED TO COMPLETE ABATEMENT (This is used for scheduling/planning purposes):	Weeks
EQUIPMENT RENTAL (AIR MONITOR; DUMPSTER; PORTABLE TOILET (\$):	
INCLUDE TRAVEL PER DAY, PER PERSON IF APPROPRIATE (USE APPROPRIATE UNIT LODGING & MEAL RATES):	

Note: This form should be completed by the Regional Maintenance Manager (not Unit Staff).

CONSTRUCTION METHOD ROUTING SHEET

MASTER COPY

DATE RECEIVED: 03/27/07 MWR NUMBER: 00907012

UNIT: EASTHAM REGION: 1

ENGINEER: DURDA-WITHERS SCOPE: _____

PROJECT: REPLACE SWINE BUILDING W/MODULAR BLDGS.

DESIGN REQUIRED ☒ YES ☐ NOT REQUIRED

DESIGN METHOD ☐ A/E FIRM ☒ IN-HOUSE

ENERGY CERT. REQUIRED ☐ YES ☒ NOT REQUIRED

CONSTRUCTION METHOD

☒ Maintenance ☐ Outside Contractor ☐ Private Operator ☐ TCI

Thomas Vian *Thomas Vian* Non
Maintenance, Director 10-10-12 Concur: ☒ Concur: _____

Comments: Vendor with MAINT Oversight

Glenn Isbell, P.E. *Glenn Isbell* Non
Engineering, Director 10/11/12 Concur: ☒ Concur: _____

Comments: _____

Frank Inmon *FI* Non
Director of Facilities Concur: ☒ Concur: _____

Comments: _____

MAJOR WORK REQUEST REVIEW PROCESS

DATE RECEIVED: **03/27/07**MWR NUMBER: **00907012**UNIT: **EASTHAM**REGION: **1**PROJECT: **REPLACE SWINE BUILDING W/MODULAR BLDGS.****STEP I: MAINTENANCE REVIEW**

PRIORITY CODE:

3**MWR RECOMMENDATION**

- ☒ PROCEED (JUSTIFICATION REQUIRED)
☐ DEFER TO PRIORITIZATION
☐ PLACE ON HOLD

EQUIPMENT REPLACEMENT?YES ☐ NO ☒**RECOMMENDED METHOD OF CONSTRUCTION**

- ☒ MAINTENANCE (UNIT, REGION)
☐ CONTRACT CONSTRUCTION
☐ TCI
☐ PRIVATE OPERATOR

COMMENTS: *Increase Swine Production**Vendor with Maint Oversight*

[Signature]
 Thomas Vian,
 Director of Maintenance

9-20-12

Date

ASBESTOS REVIEW

- ☐ INSPECTION NEEDED
☐ INSPECTION COMPLETE (See Attached)
☒ INSPECTION NOT REQUIRED

*David R. Hall**09-21-12*

David R. Hall,
 Asbestos Consultant

Date

STEP III: SCOPE ASSIGNMENT

SCOPE ASSIGNED TO:

COMMENTS:

Lonna Britt
 Planning & Programming

Date

STEP II: ENGINEERING REVIEWENGINEERING REQUIRED? YES ☒ NO ☐FULL DESIGN ☐1% TO 5% ☒*3,000 Per Glenn*

ENERGY CERTIFICATION REQUIRED?

YES ☐NO ☒**RECOMMENDED METHOD OF CONSTRUCTION**

- ☒ MAINTENANCE (UNIT, REGION)
☐ CONTRACT CONSTRUCTION
☐ TCI
☐ PRIVATE OPERATOR

ENGINEER:

Debra Dorda Withers

PROJECT CODE:

9

COMMENTS:

Glenn Isbell, P.E.

Director of Engineering

9/20/12

Date

STEP IV: BUDGET REVIEW

- ☒ FUND FOR DESIGN/CONSTRUCTION
☐ FUND FOR DESIGN
☐ PLACE ON FINANCIAL HOLD
☐ DIRECT REPLACEMENT
☐ MAINTENANCE <\$50K
☐ GR FUNDS
☐ OTHER

COMMENTS:

OCT FRB

Melinda Brewer

Program Administration

Date

MASTER COPY

08/02/10

APPENDIX 1443

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PROJECT COST ESTIMATE**

TRACKING # 00907012

DRAWINGS: _____

LOCATION: EASTHAMDATE: 2/22/2010Last update for CEP
1/9/12

ASSIGNED ENGINEER: _____

EST. BY: Patrick McGintyPROPOSED TITLE: RENOVATE SWINE WEANING BARN

AOBJ	DESCRIPTION	EST \$ AMT	AOBJ	DESCRIPTION	EST \$ AMT
			8238	Floor coverings	_____
8003	Direct salaries-O/S construction	<u>\$738,000.00</u>	8239	Hardware	_____
8041	Contractor's Overhead & Profit	<u>\$553,500.00</u>	8240	Painting & Glazing	_____
8033	Direct salaries-AREA Maint	_____	8241	Insulation	_____
8034		_____	8242	Fire protect /Security sys	_____
8042	Direct salaries-UNIT Maint	_____	8243	Plastics(shta, lams, etc.)	_____
8350		_____	8245	Road construction material	_____
8115	Design fees	_____	8250	Industry produced items	_____
8116	Testing services	_____	8310	Furnishings & Equipment	<u>\$300,000.00</u>
8225	Prefab concrete/block & brick	_____	8321	Parts- furnishings & equip	_____
8226	Concrete materials	<u>\$86,100.00</u>	8391	Rental-furnishings & equip	_____
8227	Masonry materials	_____	8322	Consumables	_____
8228	Lumber/light metal framing	<u>\$720,900.00</u>	8324	Telecommunications	_____
8229	Reinforcing steel	_____	8471	Soil testing	_____
8230	Structural steel	_____	8505	Purchase of building	_____
8231	Sheetmetal	_____	8511	Land & site prep	_____
8232	Plumbing	_____	8520	Construction of roads	_____
8233	Electrical	_____	8564	Mach. equip(CAPITALIZED)	_____
8234	Heating/ventilation	_____	0000	Other 4% Escalation	<u>\$335,790.00</u>
8235	Roofing materials	_____	0000	Other	_____
8236	Security material/fencing	_____	0000	Other	_____
8237	Windows, doors, & locks	_____	0000	Other	_____

GENERAL CONTRACTOR

ESTIMATED COST: \$2,398,500.00+ 335,790.00 = 2,734,290.00

APPENDIX 1444

P B M